

Assembly Bill No. 1552

CHAPTER 373

An act to amend Sections 47025, 78636, and 78674 of, to add Sections 1109, 47005, 47005.1, 47005.2, 47005.3, 47022, 47022.1, 47022.2, 47022.3, 47022.4, 47022.5, 47022.6, and 47022.7 to, and to repeal Section 103.5 of, the Food and Agricultural Code, relating to marketing agricultural products.

[Approved by Governor September 28, 2001. Filed
with Secretary of State October 1, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1552, Committee on Agriculture. Agricultural products.

Existing law establishes the biomass-to-energy incentive grant program administered by the Department of Food and Agriculture.

This bill would provide that procedures, forms, and guidelines implementing environmental grant programs of the department are exempt from submission to the Office of Administrative Law.

Existing law generally regulates direct marketing of agricultural products, including marketing in farmers' markets.

This bill would, in addition, impose additional requirements relating to sales, transport, packaging, and labeling of products sold at farmers' markets and would permit various inspections by enforcing officers. Violation of these provisions would be a misdemeanor, pursuant to existing law.

By creating new crimes, this bill would impose a state-mandated local program.

Existing law authorizes the Secretary of Food and Agriculture or the county agricultural commissioner to assess civil penalties for violations relating to certified farmers' markets.

This bill, in addition, would authorize the secretary and county agricultural commissioners to administer civil penalties and certificate suspensions irrespective of the county in which the violation occurred or the county in which the certificate was issued.

Existing law creates the California Tomato Commission in state government, and prescribes the membership, functions, and duties of the commission.

For the purpose of those provisions, existing law defines "tomatoes" to mean all tomatoes that are produced for commercial purposes and are handled within the state in fresh form, except cherry tomatoes, tomatoes



grown in a greenhouse either under glass or plastic, and hydroponically grown tomatoes, as defined.

This bill would recast those provisions to define “tomatoes” to mean all tomatoes that are produced for commercial purposes and are handled within the state in fresh form, except cherry tomatoes, and tomatoes grown in a greenhouse, as specified.

Existing law specifies the powers and duties of the California Tomato Commission, including, among other things, the authority to accept contributions of funds for purposes of promoting and maintaining the tomato industry.

This bill would, in addition, authorize the commission to solicit contributions for these purposes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 103.5 of the Food and Agricultural Code is repealed.

SEC. 2. Section 1109 is added to the Food and Agricultural Code, to read:

1109. Procedures, forms, and guidelines implementing environmental grant programs of the department are exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 3. Section 47005 is added to the Food and Agricultural Code, to read:

47005. An enforcing officer may enter and inspect any place or conveyance where products are produced, stored, packed, delivered for shipment, loaded, shipped, transported, or sold pertaining to a certified producer’s certificate over which they have jurisdiction.

SEC. 4. Section 47005.1 is added to the Food and Agricultural Code, to read:

47005.1. An enforcing officer may inspect all products, containers, and equipment found in any place or conveyance to determine compliance with this chapter or the regulations adopted thereunder. The enforcing officer may also take representatives samples of products and containers, which may be subject to any method of inspection or testing as deemed necessary.



SEC. 5. Section 47005.2 is added to the Food and Agricultural Code, to read:

47005.2. An enforcing officer may seize and hold as evidence all or any part of any container, pack, load, bulk lot, consignment or shipment of products which is packed, delivered for shipment, loaded, shipped, transported, or sold to secure the conviction of the party the enforcing officer knows or believes has violated or is violating any provision of this chapter or the regulations adopted thereunder.

SEC. 6. Section 47005.3 is added to the Food and Agricultural Code, to read:

47005.3. Any evidence that is seized under the authority of this chapter or the regulations adopted thereunder by an enforcing officer in any county may be admitted into evidence in any action taken by any other county.

SEC. 7. Section 47022 is added to the Food and Agricultural Code, to read:

47022. It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to prepare, pack, place, deliver for shipment, deliver for sale, load, ship, transport, cause to be transported, or sell any products in bulk, or in any container or subcontainer, unless such products conform to the provisions of this chapter or the regulations adopted thereunder.

SEC. 8. Section 47022.1 is added to the Food and Agricultural Code, to read:

47022.1. It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to deceptively prepare, pack, place, deliver for shipment, load, ship, transport, or sell any products.

SEC. 9. Section 47022.2 is added to the Food and Agricultural Code, to read:

47022.2. It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to mislabel any products, or place or have any false or misleading statement or designation of quality, grade, trademark, or trade name, on any wrapper or container, or on the label or lining of any container of any product, or on any placard that is used in connection with, or which has reference to, any products, bulk lot, bulk load, load, arrangement, or display of products.

SEC. 10. Section 47022.3 is added to the Food and Agricultural Code, to read:

47022.3. It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to falsify any documents or to make any statement, representation, or assertion



orally, by public outcry, proclamation, or in writing, or by any other manner or means whatever, that concerns the quality, size, maturity, condition, or any other matter that relates to products which is false, deceptive, or misleading in any particular.

SEC. 11. Section 47022.4 is added to the Food and Agricultural Code, to read:

47022.4. It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to remove or dispose any products, or their containers to which any warning tag or notice has been affixed by an enforcing officer, or to remove the warning tag or notice from the place where it is affixed, except under a written permit to do so from an enforcing officer or under his or her specific direction.

SEC. 12. Section 47022.5 is added to the Food and Agricultural Code, to read:

47022.5. It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to refuse to submit any container, subcontainer, load, or display of products to the inspection of an enforcing officer, or to refuse to stop any vehicle which contains products for the purpose of inspection by an enforcing officer.

SEC. 13. Section 47022.6 is added to the Food and Agricultural Code, to read:

47022.6. It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to refuse to submit to inspection by an enforcing officer of any property used in the sales, storage, or production of agricultural products.

SEC. 14. Section 47022.7 is added to the Food and Agricultural Code, to read:

47022.7. It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to alter in any respect any certified producer's certificate, any certified farmers' market certificate, any notice of violation, report, statement, or other document that is referred to in this chapter, which is issued by an enforcing officer.

SEC. 15. Section 47025 of the Food and Agricultural Code is amended to read:

47025. (a) In lieu of prosecution, but not precluding suspension or revocation of certified producer's certificates or certified farmers' market certificates, the secretary or the county commissioner may levy a civil penalty against a person who violates this chapter or any regulation implemented pursuant to this chapter. Actions to administer administrative civil penalties, suspensions, or both, against a certified producer may be made by the county agricultural commissioner who



either issued the certified producer's certificate or issued the violation, regardless of the county or counties where the violation occurred, or where the certified producer's certificate originated. The secretary may take action to administer administrative civil penalties, suspensions, or both, against a certified producer, regardless of the county or counties where the violation occurred, or where the certified producer's certificate originated.

(b) Civil penalties shall be levied in proportion to the violation, measured as either "serious," "moderate," or "minor."

(1) "Serious" violations are repeat or intentional violations, punishable by a civil penalty of not less than four hundred one dollars (\$401) and up to a maximum of one thousand dollars (\$1,000) per violation.

(2) "Moderate" violations are repeat violations or violations that are not intentional, punishable by a civil penalty of not less than one hundred fifty-one dollars (\$151), but not more than four hundred dollars (\$400) per violation.

(3) "Minor" violations are violations that are procedural in nature, punishable by a civil penalty of not less than fifty dollars (\$50), but not more than one hundred fifty dollars (\$150) per violation.

(c) Before a civil penalty is levied pursuant to this section, the person charged with the violation shall receive written notice of the proposed action including the nature of the violation and the amount of the proposed penalty. The person shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or if the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner's evidence and to present evidence on his or her own behalf. If a hearing is not timely requested, the commissioner may take the action proposed without a hearing.

(d) If the person, upon whom the commissioner levied a civil penalty, requested and appeared at a hearing, the person may appeal the commissioner's decision to the secretary within 30 days of the date of receiving a copy of the commissioner's decision. The following procedures apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent, state the grounds for the appeal, and include a copy of the commissioner's decision. The appellant shall file a copy of the appeal with the commissioner at the same time it is filed with the secretary.



(2) The appellant and the commissioner, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the secretary, may present the record of the hearing and a written argument to the secretary stating the ground for affirming, modifying, or reversing the commissioner's decision.

(3) The secretary may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefor. The times may be altered by mutual agreement of the appellant, the commissioner, and the secretary.

(5) The secretary shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2), that he or she has received. If the secretary finds substantial evidence in the record to support the commissioner's decision, the secretary shall affirm the decision.

(6) The secretary shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the secretary may affirm the commissioner's decision, modify the commissioner's decision by reducing or increasing the amount of the penalty levied so that it is within the secretary's guidelines for imposing civil penalties, or reverse the commissioner's decision. Any civil penalty increased by the secretary shall not be higher than that proposed in the commissioner's notice of proposed action given pursuant to subdivision (c). A copy of the secretary's decision shall be delivered or mailed to the appellant and the commissioner.

(8) Any person who does not request a hearing with the commissioner pursuant to a penalty assessed under subdivision (c) may not file an appeal to the secretary pursuant to this subdivision.

(9) Review of a decision of the secretary may be sought by the appellant within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(e) After the exhaustion of the appeal and review of procedures provided in this section, the commissioner, or his or her representative, may file a certified copy of a final decision of the commissioner that directs the payment of a civil penalty, and, if applicable, a copy of any decision of the secretary, or his or her authorized representative, rendered on an appeal from the commissioner's decision and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or



order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

(f) In addition to the civil penalties prescribed in subdivision (b), the appellant may be required to cover the cost of the administrative hearing unless the decision of the secretary or county agricultural commissioner is overturned.

(g) “Person,” as used in this section, means any applicant for a certified producers’ certificate or certified farmers’ market certificate, producer of agricultural products, certified producer, family member or employees of a certified producer, certified farmers’ market manager, or certified farmers’ market operator engaged or involved in the direct marketing of agricultural products at a certified farmers’ market pursuant to this chapter.

SEC. 16. Section 78636 of the Food and Agricultural Code is amended to read:

78636. (a) “Tomatoes” means all tomatoes that are produced for commercial purposes and are handled within the state in fresh form, except cherry tomatoes, and tomatoes grown in a greenhouse.

(b) For purposes of this section, “tomatoes grown in a greenhouse” means tomatoes grown in a fixed steel structure using irrigation and climate control, in an artificial medium that substitutes for soil.

SEC. 17. Section 78674 of the Food and Agricultural Code is amended to read:

78674. The commission may solicit and accept contributions of, or match private, state, or federal funds, and employ or make contributions of funds to other persons or state or federal agencies for purposes of promoting and maintaining the tomato industry.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

